

March 2014



## EUROPEAN POLICY BRIEF

*Published in the framework of the Egmont project*

## The Belgian parliaments and EU affairs: the reasons behind their limited involvement

*Xavier Vanden Bosch*

**Given their limited involvement in EU affairs, the Belgian parliaments at the different levels of the Belgian federation barely contribute to the legitimization process of the EU's actions. In order to strengthen their role, not only should governmental communication towards parliaments be improved but parliamentary activities should also adapt to the confederal features of Belgium. The latter poses a unique challenge in Europe.**

Throughout the decades-long debate on the so-called 'democratic deficit' of the EU, it has often been claimed that not only the European Parliament but also national parliaments should play a stronger role in the EU decision-making process. For the followers of the 'de-parliamentarisation thesis', the erosion of the power of national assemblies, the most direct representation of citizens, would have created a legitimacy gap that the European Parliament has not been able to fill, despite taking progressive steps to that end.

European Treaties have progressively acknowledged the role of national parliaments and thereby the principle of dual legitimacy (Piedrafita, 2013). However, both the perceptions of the necessity to increase the involvement of national parliaments and the opinions on the control mechanisms over EU policymaking exist in a multitude of shades, possibly reflecting diverging democratic traditions and parliamentary practices across the EU.

Nevertheless, in the context of the eurozone economic crisis, several developments may have reinforced the sentiment that the principle of dual legitimacy in the EU should be fostered (Stratulat & al, 2014). Firstly, acting as the highest executive body, the European Council played a major role in the context of the crisis and Euro summits were also created (between 2010 and 2013, the European Council convened 24 times, and 5 Euro summits took place). But, unaccountable as a whole, the European Council can only derive its legitimacy from national parliaments. Secondly, intergovernmental Treaties requiring (national) parliamentary ratifications were adopted (the Treaty on Stability, Coordination and Governance (TSCG), the Treaty on the

European Stability Mechanism and – currently under negotiation – the treaty for the creation of a Single Resolution Fund). Finally, despite being adopted by the European Parliament, legislation strengthening European economic governance (six-pack, two-pack) does not grant any significant role to the European Parliament. At the same time, this strengthened economic governance directly impacts the sovereignty of national parliaments, and the EU institutions have tried to arouse the enthusiasm of national parliaments for recommendations in favour of structural reform at the national level.

This Brief, which will proceed based on the assumption that national parliaments should indeed be more involved in EU affairs, will focus on the consequences of such a claim for the Belgian parliamentary system. It first discusses the most direct mechanisms of involvement of Belgian parliaments, and the extent of their use. We will see that the control currently exercised by the Belgian parliaments over the main executive bodies of the EU – the European Commission, the European Council and the Council of the European Union – is very limited, as is their practical involvement in the approval of Treaties (part II). In a second step, we will investigate the main factors impeding the capacity of Belgian parliaments to act and what could be done to potentially mitigate their effects (part III). But first of all, we will underline the relevant peculiarities of Belgian federalism, an understanding of which is essential to the study of the meaning and role of ‘national parliaments’ within the Belgian political system (part I).

## I. ON INTERNAL COORDINATION AND PARLIAMENTARISM IN THE BELGIAN FEDERAL STATE

In the EU Treaties – or in the extensive literature on the ‘democratic deficit’ of the EU – the mention of ‘national parliaments’ seems to implicitly refer to the classical unicameral or

bicameral concepts of parliamentary systems (Dopagne & Delpérée, 2010). However, neither of these conceptions apply to the parliamentary system of the Belgian federal state. To lift the ambiguity of the term ‘national parliaments’ used in the Lisbon Treaty, Belgium actually deemed it necessary to include annexed Declaration 51 stating that *‘not only the Chamber of Representatives and Senate of the Federal Parliament but also the parliamentary assemblies of the Communities and the Regions act, in terms of the competences exercised by the Union, as components of the national parliamentary system or chambers of the national Parliament.’*

The degree of involvement in EU affairs of these multiple Belgian ‘national parliaments’ (up to 9) is in turn intrinsically linked to how the executives of the Federal State, the Regions and the Communities coordinate their views on EU affairs in order to define a single ‘Belgian’ position – the only one recognised by the EU. This coordination mechanism is regulated by a cooperation agreement drawn up in 1994 following the fourth reform of the Belgian State that constitutionalized its federal character.<sup>1</sup> The agreement also specifies how the Representation of Belgium in the Council of the EU is shared between the federal, regional or community level according to their respective competences.

According to the terms of this cooperation agreement, in order to define the Belgian position at the Council of the EU, systematic horizontal coordination takes place within the Directorate-General Europe (DGE) of the Ministry of Foreign affairs which presides and provides the secretariat for the meetings, and more generally ensures that *‘the principles and coherence of the European policy of Belgium are respected’*.<sup>2</sup> A multitude of officials are consistently invited to the meetings: members of the cabinets of (i) the ministers of the ruling federal coalition (thus representing the Prime minister and the vice-Prime Ministers), (ii) the federal State Secretary for European Affairs, (iii) the Presidents (head of

government) of the different regions and communities, as well as (iv) regional or community ministers with a portfolio that includes international affairs. Depending on the agenda of the meeting, are also invited members of the cabinet of functionally competent regional and community ministers as well as some civil servants of those same ministries. They can also include members of the Belgian permanent representation (federal civil servants or regional/community level attachés). On average, of the hundred individuals potentially involved, around twenty attend each meeting.

Although it might seem that this mechanism could foster competition in the Belgian federal system, as multiple negotiators hold veto rights, it was unequivocally demonstrated that this coordination mechanism actually fosters cooperation (Beyers and Bursens, 2006). Consensus is nearly always found at the DGE level, and very rarely requires the involvement of the formal higher inter-ministerial instances, namely the Inter-ministerial Committee for External Affairs or, as a last resort, the Concertation Committee.

For the purpose of this Brief, two important preliminary observations can be made. Firstly, the intergovernmental and horizontal nature of this cooperation between the executives leaves little room for the parliaments to influence the Belgian position that will be officially endorsed in the EU institutions – we will come back to this. And secondly, this coordination mechanism reflects the constitutional equal-footing on which the federal level and the federated levels are placed. This feature affects the relevance of the comparison with the parliamentary practices of other federal countries (Germany, Austria) or countries with a very decentralised system (Spain) because, unlike Belgium, these countries depend on a hierarchy between the federal/central level and the sub-entities (Boronska-Hryniewiecka, 2013). In other words, no other European

country has gone as far as Belgium down the path of confederalism (Schock, 2004) and this affects the scope of parliamentary action in European affairs.

## II. HOW BELGIAN PARLIAMENTS DEAL WITH EU AFFAIRS

Let us now examine the involvement of Belgian parliaments in the ratification process of European Treaties (A), as well as how and to what extent they use the ‘early warning mechanism’ and ‘political dialogue’ to control the European Commission (B), and control the Belgian position within the European Council (C) and within the Council of the EU (D).

### A. *Assenting to Treaties*

Belgian Regions and Communities (federated entities) were granted important constitutional rights to conceive and adopt international treaties.<sup>3</sup> Most European treaties concern both the federal and federated entities and thus once they have been negotiated and signed, all Belgian parliaments need to assent to these treaties for the ratification process to be complete.<sup>4</sup> The procedure does take some time, as evidenced by the time it took for the TSCG to successfully go through all nine parliaments in 2013.

In principle, the veto of a single parliament would prevent Belgium from ratifying the Treaty. Because of this, the parliaments of the federated entities were granted maximal authority. From a European perspective, this could create absurd situations if, for example, the parliament of the German Community representing 80.000 citizens rejected a Treaty requiring the unanimous approval of all Member States.

Although parliaments can only approve or reject the Treaty as a whole without being able to suggest amendments, they are made aware of any negotiations for EU Treaty revisions as soon as

they begin and receive the draft Treaty before it is signed.<sup>5</sup> In principle, all the Belgian assemblies could therefore weigh in on the Belgian position in the midst of the negotiations but in truth their influence is hardly felt at all (Dumont, 2013). The debate on the recent TSCG suggests that parliaments were not truly involved in the process and mostly found themselves faced with the ‘fait accompli’, as was also the case elsewhere in Europe.

### *B. Monitoring of the principle of subsidiarity and political dialogue with the European Commission*

The measure of control a national parliament holds over the initiatives taken by the European Commission depends on two processes: the control of the principle of subsidiarity and the so-called ‘political dialogue’. The first process must be understood as the control of the subsidiarity principle as defined by the Protocol No 2 of the Lisbon Treaty via the so-called ‘early warning mechanism’, a tool allowing any member parliament to submit a reasoned opinion stating why it considers that a draft legislative act does not comply with the principle of subsidiarity. Two votes are granted to the national parliaments of each Member State. If the number of opinions that find there is a breach of the subsidiarity principle exceeds the agreed threshold, the proposal must be reviewed, although the Commission can decide not to make any changes.<sup>6</sup>

The second process, the ‘political dialogue’, is an extension of this procedure. It results from the Commission’s 2006 initiative to allow a national parliament to express itself beyond the sole and strict subsidiarity principle. This unilateral, informal and non-binding initiative of the Commission aims to give national parliaments the possibility of voicing their broader opinion and concerns to the Commission, at an early stage of the European decision-making process.

In order to implement Protocol No 2 of the Lisbon Treaty and in keeping with Declaration 51 of Belgium, Belgian parliaments concluded a ‘cooperation agreement’ which regulates how the two national votes are shared, namely on the basis of their respective competences.<sup>7</sup> However, this improvised agreement has strictly no legal value and has not entered into force (Delpérée and Dopagne, 2010). Nevertheless, the parliaments behave according to this informal political agreement. The very limited use of the ‘early warning mechanism’ probably explains why this informality has yet to create any problems.

Indeed, since the entry into force of the Lisbon Treaty, the Belgian parliaments have barely used the mechanism. Considered as a whole, the Belgian parliamentary system is one of the least active in Europe in its use of the early warning mechanism. On average since 2010, Belgian parliaments were responsible for 1.4% of all the contributions from national parliaments across Europe.<sup>8</sup>

The most active Belgian assembly is the federal Chamber of Representatives. Out of the thousand documents it receives from the European Commission every year, about a hundred are included in a consolidated summary which includes a preliminary analysis of the respect of the subsidiarity principle. Three civil servants of the European cell of the Chamber are assigned to this task. This summary is then sent to the competent permanent parliamentary committee, which can express its own opinion or potentially refer it to the plenary. Since 2010, the Chamber issued 25 opinions on legislative proposals by the Commission, four of which can be strictly considered as reasoned opinions on the subsidiarity principle.<sup>9</sup> Two of these reasoned opinions were negative, one of which pertained to the Monti II legislative proposal regarding the right to strike, which was greeted by 19 negative votes coming from 12 chambers across Europe.



and was eventually withdrawn by the Commission.<sup>10</sup>

Other assemblies barely used the mechanism. The Senate issued three opinions since 2010 including a negative one that discussed the question of subsidiarity specifically.<sup>11</sup> Regional parliaments made an even more limited use of these procedures. The Flemish Parliament issued an opinion as part of the political dialogue in 2013.<sup>12</sup> The Walloon Parliament used the system only once in 2010, mostly to try it out.<sup>13</sup>

### *C. Control of the Belgian position at the European Council*

The Belgian position in the European Council can in principle be debated within the ‘Federal advisory committee on European affairs’ (the Committee) which associates ten members of the Chamber of Representatives, ten members of the Senate and ten Belgian Members of the European Parliament. The public hearing of the Prime Minister before and after the European Council constitutes the most visible and substantial activity of the Committee.

Although these hearings are not systematic, the custom is mostly observed, which makes Belgium a Member State where the frequency of such hearings is relatively high (Hefftlér et al., 2013). We can estimate that about a dozen individuals coming from both federal chambers attend these meetings. Belgian MEPs rarely show up, either because their agenda does not allow them to or because they do not find the meeting useful enough given the other information means at their disposal. It should also be noted that some parliamentarians that are not formally members of the EU affairs committee regularly participate in these hearings.

This informal character of the meetings reflects the *informative* rather than *deliberative* intrinsic nature of the Committee. The hearing is

therefore similar to an information session where the Prime Minister begins by making a statement, followed by a series of comments and questions from the assembly. The Prime Minister in turn tries to answer them in the few closing minutes of the meeting. In practice, the Committee does not voice any form of statement regarding the Belgian position that the Prime Minister intends to defend at the European Council. This does not result from the impossibility of doing so since the Committee could adopt ‘*opinions, proposal for resolutions, recommendations or other final texts that are then submitted [...] to the plenary [...]*’.<sup>14</sup> In the past, resolutions were directed at Treaty revisions, and almost never in relation to a session of the European Council.<sup>15</sup>

### *D. Control of the Belgian position at the Council of the EU*

Belgian parliaments also have the possibility of controlling and influencing the Belgian position that will ultimately be put forward in the Council of the EU. They may do so by scrutinising proposals of legislative acts as well as non-legislative documents published by the European Institutions. Influence can be exercised with classical instruments of parliamentary control: by putting questions to the government, organising debates, bringing forward proposals for the adoption of resolutions, etc.

The rules of the House of Representatives mention that ‘*each permanent committee includes in its monthly agenda an exchange of views on European affairs that concern it and that are also included in the agenda of the Council of the European Union [...]*’.<sup>16</sup> Each Committee also selects a ‘europromotor’ from among its members whose mission is to follow European issues of relevance to the Committee, and to act in favour of their inclusion in the agenda of the Committee. The Flemish Parliament and the Parliament of the French Community adopted a somewhat similar concept of ‘europromotor’.<sup>17</sup>

Although in practice it is difficult to evaluate the degree of control of parliaments in EU affairs, it is obvious that their involvement is quite limited as a whole. Hearings of ministers before and after the meetings of the Council of the EU are far from systematic. Although it must in principle do so, the government also fails to systematically provide an annotated agenda before each Council, and to report on it afterwards. According to an analysis made by the services of the House of Representatives, less than 5% of parliamentary questions have a link with EU affairs (D'Hollander, 2013). The system of euromotors cannot apparently be considered as adequate and satisfactory in this respect.<sup>18</sup> Delreux and Randour (2013) report that only 5 questions regarding EU affairs were asked in the plenary in 2012, but that none of them dealt specifically with a legislative proposal. They also state that the few questions asked in the permanent parliamentary committees concern major orientations of EU policy rather than specific legislative acts to be debated in the Council of the EU.

### III. OVERCOMING THE MAIN FACTORS BEHIND THE LIMITED INVOLVEMENT OF BELGIAN PARLIAMENTS INTO EU AFFAIRS

What are the main reasons for the limited involvement and influence of Belgian parliaments in European affairs discussed so far? We can broadly distinguish between three main reasons.

#### *A. Belgian political system and pro-Europeanism*

In Belgium, coalition government typically relies on a docile parliamentary majority, made possible by strong party discipline and homogeneity within parliamentary groups. The negative connotation of 'particracy' is often associated with this regime in which parties can exercise a great deal of control. *De facto*, one of the main

characteristics of the Belgian political system is thus the control of the executive on the legislature, rather than vice versa (Delreux and Randour, 2013). The activities of parliaments on European Affairs are no exception.

Moreover, Belgian political parties (at least the 'traditional' parties – and by extension the majority of parliamentary groups) are very much pro-European. This consensus tends to work against any debate on EU affairs. Political parties do not take positions on EU affairs because the overall Belgian public opinion strongly favours European integration. Parties are not pressed to take a stance on EU affairs in the public arena, including and starting with parliamentary assemblies (Delreux and Randour, 2013).

However, if the Belgian political system and the widely shared pro-Europeanism can *explain* the limited involvement of Belgian parliaments in EU affairs, this should not *justify* it. Even if pro-Europeanism dominates the political landscape, it could be concealing starkly divided views on the future of European integration. For example, it is noteworthy that some extremely ambitious blueprints put forward by the EU institutions on the future of the Economic and Monetary Union were barely discussed within Belgian parliaments. This absence of public deliberation certainly prevents these political opinions from being clarified.

#### *B. Adapting parliamentarism to the coordination of the executives in the Belgian federation*

As mentioned in part I, the role of parliaments is heavily constrained in the Belgian institutional system where the executives of the federal, regional and community levels of the federation dominate the decision-making process on EU affairs. Parliaments are excluded from the internal coordination process that is exclusively conducted by governments and the

administration. Greater parliamentary involvement is therefore conceivable either before (*ex-ante*) or after (*ex-post*) this internal coordination takes places.

### Ex-ante – Prior to internal coordination

*Ex-ante*, the parliaments get a chance to express their views on EU proposals to their respective federal/regional/community governments, just as they have the opportunity to do so with the Commission within the political dialogue framework. This approach supposes that parliaments may influence the position of a specific government before it enters into the Belgian internal coordination process, as soon as EU documents are made available.

Such an *ex-ante* involvement is however bound to be quite demanding for parliamentary assemblies. Deprived of the official stance of the executive, they would have to switch from *reactivity* to *proactivity*. This would require the member of parliament to have an impressive array of skills and abilities: a sound technical understanding of the topic at hand, the capacity of detecting the politically salient aspects of EU proposals, and a good grasp of the respective competences of federal or federated entities. This proactivity would also require the right amount of support from parliamentary services. This kind of support would require closer attention to be paid to the organisation and capabilities of parliaments, thus promoting and giving them the means for greater involvement in EU affairs.

Moreover, this proposal for more *ex-ante* involvement raises a fundamental question: would the greater degree of involvement of parliaments not undermine the capacity of the entities of the Belgian State to forge compromises in the internal negotiation process when diverging interests are at stake? This fundamental question not only reflects a classical equilibrium between legitimacy and efficiency, in Belgium,

this question also touches upon the tension between the respect of the external autonomy of federated entities and the need to safeguard the coherence of the Belgian external positioning.

### Ex-post – After internal coordination

The possibility for *ex-post* control of the Belgian position runs into the issue of the fragmentation of the parliaments in the multi-level and largely non-hierarchical structure of Belgium.<sup>19</sup> First, there is no single government responsible for the Belgian position. This position is always the result of a coordination process between all governments that compose the Belgian State. Secondly and as a result, no parliamentary assembly is entitled to control this position. An assembly representing all levels of the federations where the concerted Belgian position as a whole could be jointly discussed, controlled and influenced, simply does not exist in Belgium. In principle, the Federal Chamber may only control the federal government's position, the Flemish government the Flemish position, the Walloon Parliament the Walloon position, etc. While the executives and the bureaucracy from all levels regularly convene – in working groups, at the DG E and other inter-ministerial fora – in order to define a single Belgian position, parliamentarians from the federal, regional and community levels do not convene to jointly control that single Belgian position.

In this respect, the reform of the Senate undertaken as part of the sixth reform of the Belgian State will not facilitate parliamentary control over EU affairs, quite to the contrary. If the Senate will indeed become a chamber of 'federated entities' as Senators will come directly from the regional and community Parliaments, it was essentially designed as a forum for future institutional reforms in Belgium.<sup>20</sup> The Senate will be stripped of most of its external affairs competences and will not be entitled to approve international treaties anymore. As a non-

permanent body, the Senate will in any case not be able to control the government. Whether the participation of senators to the federal EU Affairs Committee will be maintained is also uncertain. In sum, the federal level is evolving more towards a unicameral system than towards a bicameral federal system that would be of particular relevance to the external affairs of the Belgian federation, and EU affairs in particular.

If these constraints cannot be ignored, practical and partial solutions can nevertheless be advocated to circumvent the problem. For example, stronger parliamentary control can be promoted within the federal Chamber on *mostly* federal competences for EU affairs (notably in areas such as: General Affairs, Ecofin, Justice and Home Affairs, Energy, Telecom, Employment, Social Policy, Consumer Affairs). In these cases, members of the federal Chamber would in principle be entitled to act as the resulting *Belgian* position is mostly *federal*. Accordingly, it would be advisable to organise hearings of the Finance Minister on the decisions to be taken at the Governing Council of the European Stability Mechanism,<sup>21</sup> and within the Eurogroup which gained pre-eminence during the crisis. Likewise, the Flemish Parliament is most clearly entitled to have a say on the stance of the Flemish government regarding fisheries.

However, in the numerous ‘mixed’ areas where both the federal and regional/community levels are concerned, parliamentary dialogue with their respective government on the concerted Belgian position cannot be anything but informative. For example, the regional Walloon minister of the economy could inform Walloon deputies about the Belgian position on a proposal to be discussed in the Competitiveness Council. But in no possible way are regional deputies entitled to control, influence or change a Belgian position that has already been determined and concerns the two other regions in addition to the federal level.

### *C. Improving governmental communication with parliaments*

The quality and relevance of the information at the disposal of the parliamentarians is crucial for effective control to take place. However, the parliament is usually poorly informed about the position a government intends to adopt when it concerns European affairs,

Wherever stronger parliamentary scrutiny is considered, better governmental communication is required. Information on the result of internal coordination meetings could turn out useful. An increased number of regular hearings, both before and after the Council of the EU takes place would be advisable.

Belgium could learn much from the Netherlands where one well-established practice consists in the government systematically sending out a report at an early stage and with the support of its administration which not only summarises every proposition of the Commission but also specifies what the respective Dutch position will be (*Beoordeling Nieuwe Commissievoorstellen* (BNC) *fiche*).<sup>22</sup> The information also specifies administrative and budgetary consequences as well as a first analysis regarding the principles of subsidiarity and proportionality. Moreover, before attending the Council, the Dutch Minister sends a letter specifying his or her intention (an annotated agenda) and a report is also provided for the Parliament after the Council. Of course, the information does not necessarily contain extremely salient Dutch positions, but the process undoubtedly increases the visibility of the EU proposals currently being discussed for the members of parliament.

## CONCLUSION

In this Brief, we underlined that Belgian parliaments – understood as all nine assemblies composing the Belgian parliamentary system – are barely involved in EU affairs. Therefore they



can hardly be considered as contributing to the legitimisation process of EU action. Although all its assemblies have to give assent to European Treaties as they are touching upon both federal and regional or community competences (bar the Senate that will lose all Treaty assent competences following the sixth Belgian state reform), in practice their veto right cannot compensate for the lack of early involvement and debate. Besides, Belgian parliaments were not much active in their use of the instruments that the EU put at their disposal such as the early warning mechanism for the control of the subsidiarity principle, and by extension the ‘political dialogue’ with the Commission. There is very little parliamentary follow-up on the proposals from EU institutions, even when they display some political salience and relevance for Belgium. Accordingly, the influence of the Belgian parliamentary system on the Belgian position defended in the Council of the EU and the European Council is almost non-existent.

One major consideration underlined in this Brief is that the kind of federalism that developed in Belgium significantly restrains the potential involvement of the elected assemblies. First, the federal and federated levels (and thus political parties across levels) have to coordinate their views in order to define a unique Belgian position to defend at the EU level. Belgian assemblies are *de jure* excluded from this coordination mechanism which takes place exclusively within the executive and the administration. Moreover, the Belgian parliaments are *de facto* deprived from much of their control capability and influence before and after this coordination takes place. This follows from the simple consideration that no single government of the Belgian federation can in principle be fully held accountable for the Belgian position as a whole since it is always the concerted position among all entities of the federation. Moreover, no single parliamentary assembly is entitled to control this position. Notably, the reform of the Senate further

deprives the federal level of a possible forum able to ensure collective oversight on the Belgian position in EU affairs.

Despite the difficulties imposed by the strong confederate features of the internal decision-making process on EU affairs, the Belgian parliaments could still develop their influence. They could mostly do so at an early stage, before the internal coordination (*ex-ante*), in the first weeks following the publication of legislative or non-legislative acts by the EU institutions. They would thereby seize the opportunity to voice their opinion not only to the Commission but also to their respective governments. At a later stage, once the internal coordination process has defined a Belgian position (*ex-post*), stronger control by the Chamber of Representatives should particularly be possible on the matters of mostly federal competences both before and after a Council of the EU. This would in any case require much better communication between the government and the Chamber on its position than current standards. A greater degree of involvement would also require that parliamentary groups of the governmental majority take up a more leading role in the debates on EU affairs, rather than leaving it all out to the executive. They would however need to do so without jeopardizing the effectiveness of the Belgian internal coordination system, where cooperation is essential. Only the realisation that EU affairs cannot be narrowly defined as *external* policy affairs, but rather as internal policies with a European dimension, may entice parliaments to redefine their role in this respect.

*Xavier Vanden Bosch is Research Fellow in the European Affairs programme of the Egmont Institute. The auteur would like to thank in particular Hugo D'Hollander, Hugues Dumont, Xavier Demoulin and Wampie Libon-van der Wal for the discussions that greatly helped for the writing of this Policy Brief.*



## EUROPEAN POLICY BRIEF

### ENDNOTES

<sup>1</sup> 'Accord de coopération entre l'Etat fédéral, les Communautés et les Régions, relatif à la représentation du Royaume de Belgique au sein du Conseil de Ministres de l'Union européenne' (M.B. 17.11.1994). In practice, the agreement also followed the insertion of art.146 of the Maastricht Treaty (currently art. 16 TFUE) which states that "The Council shall consist of a representative of each Member State at ministerial level, authorized to commit the government of that Member State". This mention reflected the demand of federated entities of Belgium (and Germany) that aimed to introduce a decentralized system of representation of a Member State in the Council of Ministers.

<sup>2</sup> In Point 5 in the development of the Cooperation Agreement op.cit. 1.

<sup>3</sup> Art.167 (3) of the Belgian Constitution allows Regions and Communities to conclude Treaties on Matters for which their Parliament are competent.

<sup>4</sup> Following the sixth reform of the Belgian State, and its entry into force after the elections of May 2014, the Senate will not have to approve the so-called mixed Treaties anymore. Hence, eight instead of nine Parliamentary assemblies will have to approve them. Initially considered, the possibility that the 'new' Senate, now directly representing the federated entities, would consent to the mixed Treaties in place of Regional and Community parliaments was finally not retained. This largely reflects the difficulty for federated entities to grant back to the federal level the veto rights they acquired.

See Dumont (2013) p.39 for a summary of how so called 'mixed Treaties' are negotiated (internally), how Belgian delegation for the negotiation is defined and the modalities for their signature.

<sup>5</sup> Art. 168 of the Belgian Constitution for the federal Chambers, and Art. 16 §2 (2), of the Special Law of 8a August 1980 for regional and community Parliaments.

<sup>6</sup> The following table summarizes the early warning mechanism procedure. Taken from Piedrafita (2013).

	<b>'Yellow card' procedure</b>	<b>'Orange card' procedure</b> Only for ordinary legislative procedure
<b>Threshold</b>	A number of negative opinions representing: <ul style="list-style-type: none"> <li>• at least 1/3 of the total votes (2 votes per MS) or</li> <li>• 1/4 for legislative acts concerning the area of freedom, security and justice</li> </ul>	A number of negative opinions representing at least a simple majority of the votes allocated to national parliaments
<b>Effect</b>	The initiating EU institution (usually the Commission) must review the proposal. It can maintain, amend or withdraw it.	The European Commission must review the proposal, and it can maintain, amend or withdraw it.  If the European Commission decides to maintain the proposal, it has to justify its decision, and both the Council and the European Parliament can reject it

		before the end of the first reading if they find it incompatible with the subsidiarity principle.
--	--	---

<sup>7</sup> The agreement signed by the presidents of 8 different parliaments in 2005 (in prevision of the Treaty establishing a Constitution for Europe) specifies that when one competent parliament submits a reasoned opinion, one vote is cast. When several competent parliaments submit a reasoned opinion, the total of the votes is split according to their domain of competence. When the proposal for a legislative act is linked to an exclusive federal competence, the two federal chambers maintain their capacity to cast the two votes. If the proposal is linked to the competences of regions and communities, “two votes are cast when at least two competent parliaments from a different linguistic regime communicate a reasoned opinion”. For a topic where a parliament is exclusively competent it can express the two votes (in practice the Flemish Parliament on fisheries). Finally, when the legislative project has a ‘mixed’ nature as it concerns both the federal and the regional/community levels, “two votes are cast when at least one federal chamber and one regional/community parliament submit a reasoned opinion”. The agreement also foresees that the Council of State would litigate in case of a disagreement regarding the respective competence of a parliament to submit a reasoned opinion.

The ‘agreement’ can be found in the annexes of rules of procedure of the House of Representatives at: [http://www.lachambre.be/kvvcr/pdf\\_sections/publications/reglement/reglement\\_FR\\_bijlage\\_10\\_2010.indd.pdf](http://www.lachambre.be/kvvcr/pdf_sections/publications/reglement/reglement_FR_bijlage_10_2010.indd.pdf)

<sup>8</sup> Own calculation based on the data covering 2010-2013 provided by the Directorate for the Relations with National Parliaments, European Parliament, on its website:

<http://www.europarl.europa.eu/webnp/cms/pid/1876> (last consulted 14/02/2014). This is obviously a purely quantitative assessment. For example, the (hyper) activity (at least quantitatively) of the Italian Senate and the Portuguese Parliament makes them outliers in the dataset.

<sup>9</sup> Based on the IPEX database ([www.IPEX.eu](http://www.IPEX.eu)) and the dedicated page on the website of the Chamber of representatives at:

<http://www.lachambre.be/kvvcr/showpage.cfm?language=fr&section=/pri/europe&story=sub.xml&rightmenu=right> (last consulted 21/02/2014)

<sup>10</sup> ‘Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services’ (COM 2012 (130). For the details on the procedure, see the page: [http://oide.sejm.gov.pl/oide/en/index.php?option=com\\_content&view=article&id=14765&Itemid=793](http://oide.sejm.gov.pl/oide/en/index.php?option=com_content&view=article&id=14765&Itemid=793) and Fabrini and Granat (2013)

<sup>11</sup> Based on IPEX database and on the Senate database.

<sup>12</sup> The opinion was about a proposal establishing a framework on market access to port services and financial transparency of ports COM (2013) 296. See document Nr 2147 (2012-2013) 2 on the Flemish Parliament website at [www.vlaamsparlement.be](http://www.vlaamsparlement.be).

<sup>13</sup> The opinions were about directives COM2010 (94) and COM 2010(95), no objections were made, for more information see [http://parlement.wallonie.be/content/default.php?p=eur\\_avis](http://parlement.wallonie.be/content/default.php?p=eur_avis)

<sup>14</sup> Art.68 (4) of the rules of procedure of the Chamber of Representatives (Règlement de la Chambre des représentants). Own translation.

<sup>15</sup> The last resolution adopted by the Chamber concerned the European Council of Laeken of 2001, see (Doc. Ch. 50 1527/002). For the complete overview of the output of the Chamber on EU affairs, see: [http://www.lachambre.be/kvvcr/pdf\\_sections/pri/europe/RAPPORTS\\_19\\_10\\_2012.pdf](http://www.lachambre.be/kvvcr/pdf_sections/pri/europe/RAPPORTS_19_10_2012.pdf)

<sup>16</sup> Art.37 of the rules of procedure of the Chamber of Representatives (Règlement de la Chambre des représentants). Own translation.

<sup>17</sup> See Art 31 of Règlement intérieur du Parlement de la Fédération Wallonie-Bruxelles and for the Flemish Parliament the following webpage:

<http://www.vlaamsparlement.be/vp/informatie/diensteuropa/beleidsdomein/algemeen/europromotoren.html>.  
(last consulted 14/02/2014)

<sup>18</sup> See the comments made by Turtelboom, Chevalier, Vautmans and Dierickx in their proposal for a modification of the Rules of Procedure of the Chamber of Representatives concerning the follow-up of EU affairs. DOC Chambre 51 2337/001, 14 Marc 2006.

<sup>19</sup> This brief consideration could certainly be further explained by the plural and hesitant Belgian doctrine on federalism, which in general considers 'sovereignty' as relative concept in Belgium. See Piret (2007) for an overview.

<sup>20</sup> See Matthijs (2013) and Muyle (2013) for details on the Senate reform.

<sup>21</sup> A proposal for a resolution for control of the decision taken in the European Stability Mechanism was put forward without success in the Chamber. See the Chamber document n° 53 2103/001, 'Proposition de résolution concernant le mandat de la Belgique au sein du Mécanisme Européen de Stabilité', 14 march 2012.

<sup>22</sup> For more information on this system, consult the dedicated pages on the *Tweede Kamer* website, at <http://tweedekamer.nl/hoewerkt/tweedekamereneuropa/nederlandsstandpunt/index.jsp>

## SELECTED BIBLIOGRAPHY

Beyers & Bursens, (2006), 'The European rescue of the Federal State: How Europeanization shapes the Belgian state, Paper prepared for the ECPR Standing Group on the EU Third Pan-European Conference on EU Politics 21-23 September, Istanbul, Turkey.

Boronska-Hryniewicz, (2013), 'Subnational parliaments in EU policy control: explaining the variations across Europe', EUI Working papers, RSCAS 2013/38, June.

Delpérée & Dopagne, (2010), 'Le dialogue parlementaire Belgique-Europe', Bruxelles, Bruylant, 2010.

Delreux, T. & Randour, F., (2013), 'L'eupéanisation des institutions belges: l'adaptation du parlement fédéral belge au processus décisionnel européen', in *Revue des affaires européennes*, volume 2013, number 01.

D'Hollander, H., (2013), 'De Parlementaire controle op de Europese besluitvorming', internal document of the Chamber of representatives, 14 april.

Dumont, H., (2013), 'Le partage des compétences relatives à l'élaboration des normes européennes entre l'Etat belge et ses composantes fédérées', in *Revue des affaires européennes*, volume 2013, number 01.

Fabrizi F., Granat, K., (2013), 'Yellow card, but no foul' the role of the national parliaments under the subsidiarity protocol and the commission proposal for an EU regulation on the right to strike', *Common Market Law review* 50: 115-144.

Heffler, C., Krelinger, V., Rozenberg, O. Wessels, W., (2013), 'National Parliaments: their emerging control over the European Council', Policy paper 89, 27 March, Notre Europe.

Jančić, D., (2012), 'The Barroso Initiative: Window dressing or Democracy Boost?', *Utrecht Law review*, volume 8, Issue 1, January.

Matthijs, H., (2013), 'De hervorming van de Senaat', C.D.P.K., 2013, afl.1, 52-67

Muyle, K., (2013), 'De hervorming van de Senaat en de samenvallende verkiezingen', of hoe de ene hervorming de andere dreigt ongedaan te maken, T.B.P., 2013, afl.6-7-8, p. 473-491.

Piedrafita, (2013), 'EU Democratic Legitimacy and National Parliaments', CEPS Essay, N°7, 25 November.

Piret, J. (2007), 'La Belgique fédérale est-elle un Etat souverain ?', *Revue belge de droit constitutionnel*, 2007/1, pp.3-18.

Stratulat, C., Emmanouilidis, J., Fischer, T., Piedrafita, S., (2014), 'Legitimising EU Policymaking: What role for National Parliaments?', Discussion Papers for Session 1 of the BTTD 2014 jointly organised by the Bertelsmann Stiftung, The European Policy Center and the Center for European Studies.

Schwok, R., (2004), 'Paradoxes de la politique européenne en Belgique', *Studia Diplomatica*, Vol. LVII, N°3.





The opinions expressed in this Policy Brief are those of the author(s) alone, and they do not necessarily reflect the views of the Egmont Institute. Founded in 1947, EGMONT – Royal Institute for International Relations is an independent and non-profit Brussels-based think tank dedicated to interdisciplinary research.  
[www.egmontinstitute.be](http://www.egmontinstitute.be)

© Egmont Institute 2014. All rights reserved.